FEDERAL COMMUNICATIONS INDIANA COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	WC Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

COMMENTS OF
THE INDIANA UTILITY REGULATORY COMMISSION
ON FURTHER NOTICE OF PROPOSED RULEMAKING
SECTIONS XVII L - R

I. Introduction

The Indiana Utility Regulatory Commission (Indiana Commission) respectfully submits these comments on the Federal Communications Commission (FCC or Commission) Further Notice of Proposed Rulemaking on Reform of the Universal Service Fund and Intercarrier Compensation (USF/ICC FNPRM) Sections XVII L-R.

The Indiana Commission supports the encouragement of competition in the provision of communication services and generally supports reforming both the Universal Service Fund (USF) and Intercarrier Compensation (ICC). However, as indicated in its previous comments on these issues, the Indiana Commission supports the reforms proposed by the Federal-State Joint Board on Universal Service, going at least back to the 2007 Recommended Decision, and does not support all of the specific reforms the FCC has chosen to make. Further, the Indiana

Commission has serious concerns that the FCC's reforms and the proposed implementation of those reforms may result in the unintended elimination of all communication services for portions of rural Indiana or will make those services so expensive as to be out of reach for the majority of consumers in those areas.

The Indiana Commission's Comments provide its perspective and suggestions on implementation details regarding the FCC's new intercarrier compensation rules, specifically: Transitioning All Rate Elements to Bill-and-Keep; Bill-and-Keep Implementation related to Interconnection; and Call Signaling Rules. The Indiana Commission recommends that the FCC consider these Comments and restore its historic commitment to the partnership between state and federal regulators envisioned and mandated by Congress in assuring that essential communication services remain in place, as well as encouraging competition and economic development through enhanced access to technology.

II. The Context of the Indiana Commission's Comments

From the outset, it is important that the FCC (and others) understand the following context in which the Indiana Commission is making these comments:

1) The Indiana Commission supports the encouragement of competition in communication services. In 2006, the Indiana General Assembly declared that sufficient competition existed in the provision of telecommunications services to justify enactment of statutes that reduced and streamlined the regulation of communication services, including both telecommunication and video services. These statutes were supported by Indiana Governor Mitch Daniels who signed them into law in March 2006. Nothing in these Comments should be construed as advocating any hindrance to the competitive market place.

2) The Indiana Commission has jurisdictional authority over intrastate access charges and the continuation of providers of last resort. In the reforms enacted in 2006 and since that time, the Indiana Commission has been granted specific statutory authority regarding intrastate access charges and providers of last resort. Moreover, in making these Comments, the Indiana Commission does not concede either the FCC's legal authority to preempt state authority over intrastate access charges or the technical and factual assertions the FCC makes in attempting this preemption.

3) The overriding concern of the Indiana Commission in making these Comments is that all of Indiana must continue to have necessary and essential communication services, as well as those services and advances in technology that may assist in economic development. The Indiana Commission supports the goal of expanding the provision of broadband services in rural areas and the use of the Connect America Fund (CAF) to help make this happen. However, the

FCC's modifications will greatly reduce and/or eliminate two important revenue streams of USF support and intercarrier compensation for rural local exchange carriers (RLECs), while possibly leaving insufficient revenue through the CAF. As a result, these reforms have a high likelihood of negatively impacting the financial viability of RLECs and may even force some of them to discontinue their services.

Unfortunately, the FCC's modifications to ensure greater efficiency in universal service and intercarrier compensation will not result in a competitive market place. In instances where competition may exist in only a portion of an RLEC's service territory, the FCC has determined that support should still be made available in the remaining portion of its territory, where there are no competitors. The end result of those modifications is likely to be an erosion of competition. If the RLEC is forced to go out of business by the elimination of the majority of its revenue streams, it will likely do so throughout its *entire* service territory, not just the portions of its territory with an unsubsidized competitor. In either case, there would be one less provider of essential communication services, and customer choice would be diminished. Departure of the RLEC from areas in which there are only two providers today would leave a monopoly provider of those essential communications services. In areas in which the RLEC is the only provider, the result would be the complete absence of any providers of essential communications service and the total loss of customer choice. Both results are decidedly anti-competitive. Not only will this negatively affect consumers and the economic development of those areas, but it also raises significant public health and safety issues if those consumers no longer have access to emergency and other services.

In addition, it must be remembered that most, if not all, of the newer communications services, such as wireless and some internet protocol (IP) based services, still rely on the underlying physical facilities of the incumbent local exchange carriers (ILECs) to complete the connections necessary for the provision of those services. If the underlying RLEC is so adversely affected that necessary maintenance and operation of those underlying facilities is greatly reduced or eliminated, then not only may the affected RLEC fail, but the competition (on which the FCC makes its determination to reduce funding to the RLEC) may also no longer be able to operate in that area.

III. Transition to Bill-and-Keep for Originating Access

The Order specifies a timeline for the transition to bill-and-keep[1] for certain terminating access rates, but it does not do the same for other rate elements. In Paragraph 1302 of the

[1] The FCC defines a bill-and-keep methodology as one that "requires carriers to recover the cost of their network through end-user charges..." *USF-ICC Order*, ¶ 742

USF/ICC FNPRM, the FCC seeks states' input on how to transition to bill-and-keep for **originating** access charges.

Before responding to some of the FCC's specific questions, the Indiana Commission notes at the outset that it does not concede either the FCC's legal authority to preempt state authority over intrastate access charges or the technical and factual assertions underlying this preemption.[2] The Indiana Commission agrees with National Exchange Carriers Association (NECA) and several rural carrier associations that, "[w]hile there are various economic theories on how 'additional costs' should be calculated, it is highly unlikely that a rate of zero would meet the 'additional cost' standard [in Section 252(d)(2)A) of the Act] whenever the traffic between two carriers is significantly out of balance." The FCC has indicated that the extent to which traffic is "significantly out of balance" is not relevant in determining whether to rely on bill-and-keep at a uniform rate of zero.[3] This proposition is misguided. In large part, it is based upon mistaken beliefs that: (1)Internet service providers (ISPs), Internet backbone providers, and others in "the Internet space" routinely ignore whether the traffic they exchange is in or out of balance; and (2) therefore, entities exchanging telecommunications traffic should ignore it as well. That these beliefs are mistaken is demonstrated by the existence of corporate Internet peering documents from companies such as AT&T[4], Level 3[5], Qwest[6], and Comcast[7] clearly showing that compensation between ISPs, Internet backbone providers, etc., is <u>not</u> always implemented using bill-and-keep pricing at a uniform rate of zero.[8]

The changes to intercarrier compensation described in the *USF-ICC Order* rest upon several key assumptions – including, but not limited to, the assumption that bill-and-keep at a uniform zero rate ($0.00) is appropriate because the terminating (called) and the originating (calling) parties both benefit equally from the call and are both "cost causers".[9] It is unclear whether the FCC believes this assumption is equally true for all calls. The relative impact of this assumption on specific ICC or USF reforms is also unclear – for example, to what extent (if at all) did this assumption affect either the initial size of the new Access Recovery Charge (ARC),

---

[2] See Indiana Commission Comments on the USF-ICC NPRM, filed on Apr. 18, 2011, pages 11-12.

[3] See, e.g., USF-ICC Order, ¶¶ 755 & 756.

[4] <u>http://www.corp.att.com/peering/</u> (Last visited on February 7, 2012).

[5] <u>http://www.level3.com/en/legal/ip-traffic-exchange-policy/</u> (Last visited on February 7, 2012).

[6] <u>http://qwest.centurylink.com/legal/peering_na.html</u> (Last visited on February 7, 2012).

[7] <u>http://www.comcast.com/peering/</u> (Last visited on February 7, 2012).

[8] *See, also,* State members' comments on the USF-ICC Transformation NPRM (filed May 2, 2011), Section IX.A. through IX.D. (pp. 143 – 155) – particularly, Section IX.C.1. through C.3.

[9] USF-ICC order, ¶¶ 744 & 745; footnote 1409

the caps on the growth of the ARC, or both? [10] At any rate, that theory does not justify implementing such a radical shift in the intercarrier compensation systems currently in place, and attempting to abrogate state commissions' ratemaking authority in the process.[11]

Furthermore, according to the Rural Utilities Service (RUS)[12]:

- 99% (476 of480) of Telecommunications Infrastructure Borrowers receive interstate high cost USF support.
- 10% of Broadband borrowers receive interstate high cost USF support
- 60% of all Broadband Initiative Program infrastructure awardees draw from state and/or interstate USF support mechanisms.
- Over 70% of RUS borrowers receive greater than25% of operating revenues from USF

Notwithstanding many concerns about bill-and-keep pricing and mandating a uniform rate of zero, the Indiana Commission urges the FCC to implement in a holistic fashion any shift to bill-and-keep that *might* occur, by taking into account the financial impacts on companies of the other changes the FCC has ordered or proposed – including, but not limited to, the following:

- $4.5 billion High Cost Fund budget reduction/elimination[13]
- The lack of a Phase II CAF for RLECs[14]
- Shifting from supporting multiple eligible telecommunications carriers (ETCs) to supporting only one ETC in areas where there are no unsubsidized competitors, etc.

Reducing and ultimately removing the RLECs' ICC revenue stream through mandatory bill-and-keep at a uniform zero rate could have severe implications on the ability of some RLECs currently receiving high cost support to repay loans or other financial instruments or to remain viable. Implementation of this policy will simply exacerbate the negative consequences that are bound to occur for RLEC borrowers that are so heavily dependent upon USF revenue.

---

[10] See, e.g., USF-ICC Order, ¶¶ 36 – 39.

[11] *See* State Members' USF/ICC comments (May 2, 2011), at IX.C.4., pp. 152 & 153

[12] Overview of Telecommunications and Broadband Loan and Grant Programs, Slides # 22 & # 24, U.S. Dept. of Agriculture: Rural Utilities Service (RUS) (2011).

[13] USF-ICC Order, ¶¶ 125 & 126

[14] Ibid, ¶¶ 918

Impact of Federal Intrastate Access Rates on Intrastate Access Rates in Indiana

The Indiana Commission's legal position is that it has jurisdiction over intrastate access charges.[15] The FCC's proposed changes to interstate access rates would affect the Indiana Commission's long standing policies and rules that generally require carriers to mirror (or concur in or adopt) interstate access rates in their intrastate rate structure.[16], This policy was incorporated into Indiana law in 2006 through the enactment of Indiana House Enrolled Act 1279.[17] Differing transition schedules for interstate originating and terminating access charges may cause some companies that would ordinarily mirror the changes in the rate structures and rate levels to have to "break the mirror" during the transition period.

Regardless of the outcome of the legal challenges to the FCC's decision to preempt the states' authority to set intrastate access rates and charges, the Indiana Commission will still have jurisdiction over some intrastate access charges during the transition period. Further, issues involving Section 251(b)(5), which the FCC is using as authority for many of the new requirements mandating the shift to bill and keep, are potentially subject to arbitration under the Section 251/252 arbitration process. Therefore, the Indiana Commission has a direct interest in many of the specific implementation details regarding the transition to bill-and-keep, as well as an obligation to implement many portions of the order.

Specific FCC Questions Regarding the Transition to Bill-and-Keep for Originating Access

To the extent that originating and terminating access rates are the same for a given carrier, the amount of terminating minutes currently being exchanged (and, hence, the amount of terminating revenue) is likely to be greater than the corresponding amount of originating minutes at that particular rate for many rural companies.[18] Therefore, all other things being equal, the impact of reducing the terminating access revenue stream to zero is likely to be greater than the impact of reducing the originating revenue stream. Nevertheless, both types of reductions could have serious financial consequences for some companies. Therefore, the FCC should use caution in the extent and method used to reduce originating access charges.

---

[15] Indiana Code 8-1-2-88.6 states that "[a]ccess charges paid by an interexchange carrier for interconnection to local exchange facilities must be reasonable as determined by the commission." *See, also,* Ind. Code 8-1-2.6-5(c).

[16] Local exchange carriers are permitted to break the mirror in Indiana, but they must clearly identify the exceptions to mirroring in their intrastate access tariff filings if they do so.

[17] Indiana Code 8-1-2.6-1-5(c).

[18] *See, e.g.*, National Exchange Carriers Association Tariff F.C.C. No. 5, 5[TH] Revised Page 17-13 (March 9, 2000), which assumes a Terminating-to-Originating ratio of 1.77 or 1.78 for certain types of Interstate Switched Access service. The above should demonstrate the flawed nature of the FCC's assertion that calling and terminating parties benefit equally from the call. Economics 101 documents that it is only necessary that both parties to a transaction enjoy a net benefit to engage in that call. Presumably the initiator of the call or transaction enjoys greater self-received benefit.

In paragraph 1301, the FCC asks a number of questions, including "what, if any recovery would be appropriate for originating access charges and how such recovery should be implemented" and whether recovery of originating access charges should be limited to ILECs that do not have a retail long distance affiliate. Regardless of the specific transition framework the FCC may ultimately adopt for originating access, the Indiana Commission opposes the idea of limiting recovery of originating access solely to ILECs that do not have a long distance affiliate. The FCC should not adopt a one-size-fits-all policy and assume that ILEC originating intrastate access charges are automatically higher than terminating; in Indiana, for example, they usually are not. Because of the dependence of most rural companies on intercarrier compensation revenues, even those with a long distance affiliate could be adversely affected by eliminating originating access charges too quickly, without consideration of the impact of doing so on both the RLEC industry as a whole, and upon individual rural carriers. More broadly, the FCC should consider the transition to bill-and-keep in a holistic fashion, in conjunction with the other USF and ICC-related changes it has recently ordered or proposed.

In paragraph 1302, the FCC asks for state commissions' input on what role, if any, the states should play in implementing the transition to bill-and-keep for originating access charges. The Indiana Commission recommends that the FCC not phase out originating access on a "flash cut" basis; instead, the Indiana Commission advocates a longer transition period. During this transition period, the FCC should give states flexibility to work with companies to better coordinate the schedule for implementing changes to intrastate access rate structures and rate levels with changes to interstate access charges (and the ultimate shift to bill-and-keep), as well as flexibility to coordinate implementation of changes in intercarrier compensation with states' reviews of their own intrastate universal service and high cost funds and other state regulatory policies and procedures.

IV. Bill-and-Keep Implementation – Points of Interconnection

The Indiana Commission supports the FCC's interim rule for the sharing of transport costs between rate-of-return RLECs and Commercial Mobile Radio Service (CMRS).[19] As the FCC recognized, transport cost can be significant for RLECs. Providing this interim rule helps to protect rural LECs from experiencing still greater harm and the customers they serve from a "flash cut" to bill-and-keep methodology for intercarrier compensation. As NECA noted in its Petition for Reconsideration and Clarification on the USF/ICC Order, rural carriers encounter not only transport costs but also switching costs in terminating other carriers' traffic on the RLECs' networks. The Indiana Commission agrees that transport and switching costs for RLECs are an

[19] *USF-ICC Order* ¶ 998

important consideration when defining the edge of networks for the purposes of determining responsibility for costs under a bill-and-keep methodology. In addition, under bill-and-keep there is the possibility of one carrier incurring greater costs to deliver its traffic to the edge of its network.

States should establish the network edge pursuant to FCC guidance. The FCC should formulate its guidance in defining the network edge so as not to disadvantage one particular type of carrier's network design. To the extent that the FCC defines and determines the network edge, the Indiana Commission advocates that the FCC provide a definition that allows states some latitude in situations that might not have been envisioned at the time that definition is created.

Lastly, how the network edge is defined may increase demand for numbering resources. If the network edge is defined in such a way as to cause an increase in the points of interconnections (POIs) established by carriers, there could be an increase in numbering resource assigned. Current numbering assignment guideline rules permit, but do not require, the assignment of a Local Routing Number for a new POI. Large increases in numbering resources assigned can impact exhaust dates for area codes. While not certain such an increase in assignment of numbering resources will occur from an increased number of POIs, the Indiana Commission suggests that the FCC remain vigilant in minimizing the chance of such unintended consequences of a large increase in the use of numbering resources as result of implementing bill-and-keep.

V. Further Call Signaling Rules for VoIP

The Indiana Commission commends the FCC for revising its call signaling rules to address intercarrier compensation arbitrage practices that lead to unbillable "phantom" traffic. As stated in its previous comments in the *USF-ICC NPRM*, while not waiving any states' exclusive statutory jurisdiction with regard to intrastate traffic, the Indiana Commission supports the FCC's efforts to address the issue of phantom traffic from a policy perspective. Phantom traffic provides an additional burden for local exchange carriers at the same time many are experiencing line loss and reductions in access revenues.

The Order requires originating service providers to provide signaling information with the calling party number (CPN) and the Charge Number (CN) for all voice traffic, regardless of jurisdiction, and prohibits interconnecting carriers from stripping or altering that call signaling information.[20] The FCC declined to require transmission of originating providers' Carrier

[20] *USF-ICC Order*, ¶¶ 704 and 725

Identification Code (CIC) or Operating Company Number (OCN) due to the complexities of determining a uniform signaling requirement to accommodate the various network platforms. [21] Carriers' CICs or OCNs were not required to be included in the billing records because this is not standard industry billing practice.

While the USF-ICC Order makes meaningful strides to address the problems associated with phantom traffic, it could have gone further. As the FCC touched upon in the Order[22], the Indiana Commission advocates that the CIC or OCN be included in the billing records. Given the fact that three to twenty percent of all traffic is phantom traffic, as noted in the record, [23] providing a CIC or OCN in the billing records is a reasonable requirement that would not pose technical difficulties for the various signaling platforms (SS7, MF, or IP).

The FCC seeks comment on signaling rules for one way voice over internet protocol (VoIP) traffic (such as a VoIP call from a computer to a PSTN telephone number). A particular challenge to applying signaling rules to one-way VoIP is the fact that many of these services do not use a telephone number from the North American Numbering Plan. While the Indiana Commission does not have a specific technical solution to this problem, it advocates applying consistent signaling rules to all VoIP traffic and to all traffic terminating to the PSTN to close a potential loophole in the new call signaling rules. In the event that the FCC requires one-way VoIP providers to obtain numbering resources from the North American Numbering Plan, these providers should not be allowed to obtain multiple numbers per customer as this practice would accelerate area code exhaust. Further, to the extent the FCC grants waivers of 47 C.F.R 52.15(g)(2)(i) of the FCC's rules to allow one-way VoIP providers direct access to numbering resources from the North American Numbering Plan, these carriers should be subject to the same call signaling obligations as telecommunications carriers and interconnected VoIP providers.

VI. Conclusion

The Indiana Commission supports the encouragement of competition in the provision of communication services and in the reformation of the USF and ICC. However, the FCC should reconsider its reform decisions and work to assure that the implementation of these reforms do not result in the unintended consequence of eliminating all communication services in portions of rural America. Policies that are segment or sector preferential, whether manifest or latent in the FCC's findings and rules, do not belong in public policy. States should have the flexibility to assure that vital services are not lost.

---

[21] Ibid, ¶ 727

[22] See ¶ 726

[23] See ¶ 703

The Indiana Commission appreciates the opportunity to offer its comment on the FCC's FNPRM dealing with USF/ICC reform implementation. The Indiana Commission also looks forward to continuing the coordinated state-federal partnership with the FCC on USF/ICC issues.

Respectfully submitted this 24th day of February, 2012

INDIANA UTILITY REGULATORY COMMISSION

James D. Atterholt, Chairman

Kari A. E. Bennett, Commissioner

Larry S. Landis, Commissioner

Carolene R. Mays, Commissioner

David E. Ziegner, Commissioner